Supreme Court, U.S.
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No.

In The

Supreme Court Of The United States

YANET DISHMEY ROSARIO DE GEORGE,
Individually and on behalf of others,
Petitioner,

v.

AMERICAN AIRLINES, INC.,
a subsidiary of AMR CORPORATION,
Respondent.

- and -

DAWIND GEORGE, MARIZ DIAZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Was it error for the district court to apply a New York probate statute to determine the validity of a sham immigration marriage when: 1) The Immigration and Nationality Act regulates sham immigration marriages; 2) The relevant federal statute, the Immigration and Nationality Act, is silent on the issue of whether sham marriages are void; and 3) sham marriages are void ab initio according to federal common law?

2) Whether the district court erred when it failed to recognize that sham marriages are illegal marital contracts, and illegal contracts are unenforceable and void?

3) When a person violates federal immigration law by entering into a sham marriage, does it contravene public policy to allow the offending sham spouse to benefit from state probate law?

LIST OF PARTIES

Petitioner is Yanet Dishmey Rosario De George. Respondents are Dawind George and Maria Diaz.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The Court of Appeals' opinion (App., *infra*, 22-32) was not selected for publication in the Federal Reporter. The Westlaw citation is *De George v. Am. Airlines*, No. 08-2103-cv, 2009 WL 1868016 (2d Cir. June 30, 2009). The district court's opinion (App., *infra* 1-6) is unreported. The Westlaw citation is *De George v. Am. Airlines (In re Air Crash at Belle Harbor)*, MDL No. 1448, 2007 WL 1575251 (S.D.N.Y. May 30, 2007).

JURISDICTION

The court of appeals entered judgment on June 30, 2009. App. *infra*. 22-32. A timely petition for rehearing was denied on July 27, 2009 (App., *infra*. 32-34). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Title 8 U.S.C. §1325(c), entitled "Marriage fraud," provides that, "Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both."

Title 18 U.S.C. §1546(a) provides in relevant part:

> Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact--Shall be fined under this title or imprisoned . . .

Section 5-1.2(a) of New York's Estates, Powers, and Trusts Law (a New York probate statute) states,

> (a) A husband or wife is a surviving spouse within the meaning, and for the purposes of 4-1.1, 5-1.1, 5-1.1-A, 5-1.3, 5-3.1 and 5-4.4, unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:
> (1) A final decree or judgment of divorce, of annulment or declaring the nullity of a marriage or dissolving such marriage on the ground of absence, recognized as valid under the law of this state, was in effect when the deceased spouse died.
> (2) The marriage was void as incestuous under section five of the domestic relations law, bigamous under section six

thereof, or a prohibited remarriage under section eight thereof.
(3) The spouse had procured outside of this state a final decree or judgment of divorce from the deceased spouse, of annulment or declaring the nullity of the marriage with the deceased spouse or dissolving such marriage on the ground of absence, not recognized as valid under the law of this state.
(4) A final decree or judgment of separation, recognized as valid under the law of this state, was rendered against the spouse, and such decree or judgment was in effect when the deceased spouse died.
(5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.
(6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support.

STATEMENT OF THE CASE

This case involves important national questions of law and policy pertaining to sham immigration marriages.

On November 12, 2001, Milton George died in the crash of American Airlines Flight 587 en route from New York to the Dominican Republic. As Mr.

George's surviving spouse, Petitioner Yanet Dishmey Rosario De George (Petitioner De George) filed a wrongful death lawsuit against American Airlines in a Texas state court where American Airlines is headquartered. Subsequently, American Airlines removed the case to federal court on the basis that the Petitioner's claims were preempted by Warsaw and the Federal Aviation Act of 1958. The Judicial Panel on Multidistrict Litigation transferred the case to the Southern District of New York pursuant to 28 U.S.C. §1407. Subsequently, the district court consolidated Petitioner De George's case with others arising out of Mr. George's death, including a case filed in New York by the Co-Administrators of his estate.

Shortly after consolidation, without consulting Petitioner De George, the Co-Administrators negotiated a wrongful death settlement on behalf of Mr. George's estate. Thereafter, they took the position that Petitioner De George was not Mr. George's surviving spouse. Instead, they took the position that his first wife, Denise Valderrama-Cintron (Ms. Valderrama) was the only surviving spouse entitled to share in the settlement proceeds. Having married Mr. George in the Dominican Republic in April of 2001 and obtained a valid marriage certificate, Petitioner De George sought relief from the district court. In a motion on order to show cause, Petitioner De George asked the court to recognize her as Mr. George's surviving spouse and argued that his marriage to estranged wife Valderrama was void ab initio and invalid as a sham immigration marriage.

A. Congress' Regulation of Immigration and Fraudulent ("Sham") Marriages

The Immigration and Nationality Act (INA) is a comprehensive regulatory scheme governing immigration in the United States. In 1986, Congress enacted the Immigration and Fraud Amendments (IMFA), *inter alia*, to thwart the number of sham immigration marriages. James A. Jones, *The Immigration Marriage Fraud Amendments: Sham Marriages or Sham Legislation?*, 23 Fla. State. Univ. L. Rev. 679, 681 (Spring 1997). In 1990, Congress amended the IMFA and passed the Immigration Act of 1990. *Id.* at 686. Today, 8 U.S.C. § 1325(c) and 18 U.S.C. 1546(a) make sham immigration marriages a crime.

Although the INA provides immigration authorities with the power to penalize sham marriage offenders, it is silent on the issue of their validity. According to federal common law, however, they are invalid and void ab initio.

B. New York Law Pertaining to Spousal Estate Beneficiaries

In New York, N.Y. Est. Powers & Trusts L. § 5-1.2(a) defines the basis upon which a spouse is disqualified from serving as an estate beneficiary. It does not contemplate sham immigration marriages.

C. The Marriages in Dispute

1. Mr. George's Marriage to the Petitioner

On April 16, 2001, Mr. George married Petitioner De George in the Dominican Republic. (C.A. Appell. App. 432-433). Their marriage occurred after almost two years of dating. (C.A. Appell. App. 302). During this time and subsequent to the marriage, Mr. George traveled between the Dominican Republic and New York, where he operated his business affairs. While away, Mr. George sent Petitioner De George letters, photographs, gifts, and money. (C.A. Appell. App. 340-64). Mr. George was on his way back to see his wife, Petitioner De George, when Flight 587 crashed (C.A. Appell. App. 318).

2. Mr. George's Sham Marriage to Denise Valderrama-Cintron

In 1989, Mr. George married Puerto Rican national Valderrama in New York. Available evidence indicates that the Valderrama/George marriage ceremony was a sham, conducted solely for immigration purposes. Such evidence includes, but is not limited to the fact that: 1) Ms. Valderrama was romantically involved with Mr. George's brother (C.A. Appell. App. 380-381); 2) Ms. Valderrama did not cohabitate with Mr. George (C.A. Appell. App. 381); 3) Mr. George lived with and had a child with Co-Administrator Maria Diaz for many years subsequent to his marriage to Ms. Valderrama (C.A. Appell. App. 179); 3) during the month before he married Petitioner De George, Mr. George retained a divorce attorney in the Dominican Republic to obtain a divorce from Ms. Valderrama (C.A. Appell. App. 381); 4) divorce papers were drawn up to dissolve Mr. George's

marriage to Ms. Valderrama but his attorney neglected to finalize the matter (C.A. Appell. App. 393-400); 5) after the crash, the United States Government recognized Petitioner De George as Mr. George's surviving spouse and issued her a visa to view his remains (C.A. Appell. App. 365-371). There is no evidence that Mr. George remained in contact or communication with Ms. Valderrama before his death.

D. The District Court's Ruling

In her Motion on Order to Show cause, Petitioner De George argued that Mr. George's marriage to Ms. Valderrama was void ab initio. Moreover, it was invalid since it was an illegal contract, it lacked the mutual consent necessary to form a valid marriage contract, and it violated public policy. In opposition, the Co-Administrators argued that only Mr. George's first marriage was valid based on the application of New York law. At no time did estranged wife Ms. Valderrama file responsive papers or appear for argument before the court. Regardless, the district court issued an opinion in her favor.

According to the court, its authority to declare the proper estate beneficiary derived from 28 U.S.C. § 2201(a) and Fed. R. Civ. P. 54 and 57 as addressed in *Cartey v. Am. Airlines, Inc.* (In Re Air Crash at Belle Harbor), No. 02 MDL 1448, 2005 WL 1162448 (S.D.N.Y. May 10, 2005). App., *infra*, 3. The court did not discuss its ability to summarily extinguish

Mrs. De George's rights to the settlement without a due process hearing.[1]

In its opinion, the court chose not to address the validity of the Valderrama/George marriage according federal immigration law. According to the court, "the issue in this case is not the validity of the marriage as such, but rather whether Valderrama is eligible to collect from the George estate as the surviving spouse." App., *infra*, 3-4.

Referencing *Cartey* and a case decided by the Surrogate Court of Bronx County, *Estate of Julia Dominguez*, 2002 WL 31844696 (N.Y. Surr. Ct. Bronx Co. Nov. 18, 2009), the court's analysis hinged on New York Estates, Powers, and Trusts Law, § 5-1.2(a). App., *infra*, 4-6. The court recognized that "'green card marriages' may violate United States immigration laws" but held that, "it is the intestacy law of New York that governs the distribution of George's estate." App., *infra*, 5.

Based on the fact that illegal sham marriages are not a criteria for spousal disqualification according to New York probate law, the court found the Valderrama/George marriage valid. As a result, the court stripped Petitioner De George of her status as Mr. George's wife and dismissed her case.

---

[1] Petitioner De George presented a due process argument to the Second Circuit. However, the Court of Appeals determined that the Valderrama/George marriage was valid under Estates, Powers, and Trusts Law 5-1.2(a), rendering the remainder of the Petitioner's issues for review moot.

E. The Court of Appeals' Decision

Like the district court, the court of appeals applied New York's Estates, Powers, and Trusts Law § 5-1.2(a) to determine the validity of the Valderrama/George marriage. In a footnote, the court stated, "Although federal immigration law may treat a marriage entered into solely to obtain a 'green card' as 'void' for purposes of eligibility for favorable immigration status, federal immigration law is not applicable to domestic relations or intestacy determinations, which are governed by state law." App., *infra*, 25.

The court's Section 5-1.2(a) analysis rested on the two unreported cases relied on by the district court where it was determined that the statute does not disqualify a surviving spouse by virtue of the fact that his or her marriage was carried out to defraud immigration officials. The court of appeals also recognized a Second Circuit case stating that sham marriages can only be dissolved by divorce. App., *infra*, 28. On the basis of these three cases, the court determined that "New York law does not prohibit a surviving spouse from recovering even if the marriage was entered into for 'sham' or 'green card' purposes." App., *infra*, 29.

Sua sponte the Court of Appeals noted that in New York, a strong presumption of validity attaches to a second marriage when challenged by the existence of a prior valid marriage. App., *infra*, 30. Based on the fact that both spouses held a marriage certificate, the court recognized that Ms. Valderrama carried the burden to overcome the presumption in favor of the Petitioner's marriage.

App., *infra*, 30. However, the court referenced a New York domestic relations law stating that if either of the spouses is already married, the second marriage is invalid. App., *infra*, 31. Because Mrs. De George did not present a divorce decree pertaining to the Valderrama/George marriage, the court held, "the George-Valderrama marriage was both 'initially valid and remained undissolved,' rendering George's subsequent marriage to De George void." App., *infra*, 32.. Accordingly, the Court of Appeals affirmed the judgment below. App., *infra*. 32.

REASONS FOR GRANTING THE PETITION

Review of the issues in this case is necessary because the district court's decision is at odds with federal immigration law and policy. In short, it supports violation of federal law by permitting a sham immigration spouse to benefit from a wrongful death settlement to which she would not otherwise be entitled.

I. REVIEW IS WARRANTED TO RE-ESTABLISH THE BOUNDS OF FEDERAL IMMIGRATION LAW

A. The INA Regulates Immigration and Sham Marriages; To the Extent that the INA is Silent On the Issue of Whether Sham Marriages Are Valid, Federal Common Law Holds That They Are Void

"[T]he inevitable incompleteness presented by all legislation means that . . ." federal courts must have the power to make "'rules which may be

necessary to fill in interstitially or otherwise effectuate the statutory patterns enacted in the large by Congress.'" *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 593 (1973)(quoting Paul J. Mishkin, *The Variousness of "Federal Law:" Competence and Discretion in the Choice of National and States Rules for Decision*, 105 U. Pa. L. Rev. 797, 800 (1957)); *See also Zatuchni v. Secretary of Health and Human Services*, 516 F.3d 1312, 1328 (Fed. Cir. 2008)(Dyk., Hon. Timothy B. concurring). "If the statutes are silent . . . the federal courts must 'fill the interstices of federal legislation according to their own standards.' Therefore, if no federal statute supplies the rule of law, the court must determine whether to create federal common law or to incorporate state law as the rule of decision.'" *Montana v. United States*, 124 F.3d 1269, 1274 (Fed. Cir. 1997)(quoting *United States v. Kimbell Foods, Inc.* 440 U.S. 715, 727 (1979)).

As discussed, *supra*, Congress' regulation of immigration is thoroughly set forth in the INA. Although 8 U.S.C. § 1325(c) makes sham immigration marriages illegal, and several other provisions of the INA address the penalties associated with sham marriages, the INA is silent as to whether sham marriages are void. Federal courts, however, have supplied the answer. According to the Second Circuit, "Mutual consent is necessary to every contract; and no matter what forms or ceremonies the parties may go through indicating the contrary, they do not contract if they do not in fact assent, which may always be proved . . . Marriage is no exception to this rule: a marriage in jest is not a marriage at all." *Untied States v.*

Rubenstein, 151 F.2d 915, 918-919 (2d Cir. 1945). As stated by the Seventh Circuit, "A sham marriage, void under the law of this country as against public policy, can have no validity." *United States v. Lutwak*, 195 F.2d 748, 753 (7th Cir. 1952). "[A] marriage void ab initio is void for all purposes and has no standing in court." *Id.* at 754.

The district court arbitrarily applied § 5-1.2(a) of New York's Estates, Powers, and Trusts Law and bolstered its position with unreported opinions, one of which was its own. Estates, Powers, and Trusts Law § 5-1.2(a) lists criteria under which a surviving spouse is disqualified as an estate beneficiary. However, it does not contemplate the validity of a sham immigration marriage. Neither does Section 6 of New York's Domestic Relations Laws (addressed by the court of appeals). To the contrary, long standing federal common law filled the interstices of the INA with respect to the validity of sham marriages and found them void. The district court's application of state probate law runs contrary to this position and dilutes the effectiveness of the INA's provisions related to sham marriages. Therefore, review is necessary to re-establish the bounds of federal immigration law.

II. SHAM MARRIAGES ARE ILLEGAL; ILLEGAL CONTRACTS ARE INVALID, UNENFORCEABLE, AND VOID AB INITIO

Marriage is a contractual relationship. *See United States v. Yum*, 776 F.2d 490, 493-94 (4th Cir. 1985). Title 8 U.S.C. § 1325(c) and 18 U.S.C. 1546(a) make sham immigration marriages illegal. Illegal contracts are invalid, unenforceable, and

void ab initio. *See* Am. Jur. Contracts § 229 (2008); *Total Medical Mngmt., Inc. v. United States*, 104 F.3d 1314, 1319 (Fed. Cir. 1997)(citing *John Reiner and Co. v. United States*, 325 F.2d 438, 440 (Cl. Ct. 1963)). Accordingly, sham marriage contracts are invalid, unenforceable, and void ab initio.

III. PUBLIC POLICY DICTATES REVIEW OF THE PETITIONER'S CASE

A. The District Court's Decision Supports Illegal Immigration Activity

The issue presented is of practical importance. The district court's decision permits a sham spouse to benefit from a wrongful death settlement despite her violation of federal immigration laws. In essence, it encourages sham immigration marriages by awarding a sham spouse with settlement or inheritance money to which she would not otherwise be entitled.

B. Immigration Marriage Fraud Guts Federal Immigration Law and Serves as a Threat to National Security

In 1985, a hearing on Immigration Marriage Fraud was held before the Subcommittee on Immigration and Refugee Policy of the Committee of the Judiciary. During that hearing, the Commissioner of the Immigration and Naturalization Service noted, "Marriage fraud and fiancé fraud now pose significant threats to the integrity of our lawful immigration procedures . . . ." *Immigration Marriage Fraud: Hearings Before the Subcomm. on Immigration and Refugee Policy*

of the Senate Comm. on the Judiciary, 99th Cong., 3 (1985)(statement of Commissioner Alan C. Nelson). According to Deputy Assistant for the Secretary of State for Visa Services, Vernon D. Penner,, Jr., "Marriage or fiancé(e) fraud is a prevalent form of visa fraud increasingly encountered by our consular offices abroad. Moreover, it is a form of fraud which is highly complex and problematic in its detection and prevention." *Id.* at 25. Commissioner Nelson expanded on the problematic nature of marriage and fiancé fraud.

> Marriage and fiancé fraud are not victimless crimes. The 'innocent' United States citizen or permanent resident spouse in a 'one-sided marriage fraud' may be duped, hurt financially or destroyed psychologically. More significantly, however, **the participants in these and the 'contract fraud' marriages gut the Immigration and Nationality Act by facilitating the entry of aliens who are generally being excluded for good cause.**

Id. at 17 (emphasis added).

Despite enactment of the Immigration and Marriage Fraud Amendments of 1986, sham marriages continue to present a problem. In a recent article related to the arrest of eighty people for sham marriage fraud in Florida, United States Attorney Robert O'Neil, stated "Sham marriages are a threat to homeland security. They subvert our immigration laws and our efforts to ensure

proper and legal identification of those who enter and remain in our country." *See* U.S. Immigration and Customs Enforcement, http://www.ice.gov/pi/newsreleases/articles/080509orlando.htm (last visited Oct. 18, 2009).

Certiorari is warranted to reinforce the nation's immigration laws pertaining to sham marriages and preserve national security.

CONCLUSION

For all of the foregoing reasons, the Petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,
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No. _____

In The

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YANET DISHMEY ROSARIO DE GEORGE,
Individually and on behalf of others,
Petitioner,

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AMERICAN AIRLINES, INC.,
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- and -

DAWIND GEORGE, MARIZ DIAZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

APPENDIX

IN RE: AIR CRASH AT BELLE HARBOR

MDL 1448 (RWS)

NEW YORK ON NOVEMBER 12, 2001
02-Civ. 439 (RWS)

---x

YANET DISHMEY ROSARIO DE GEORGE

Plaintiff, 02-Civ. 4765 (RWS)

-against-

AMERICAN AIRLINES, INC.

Defendant.

---x

DAWIND GEORGE, ET., AL.,

Plaintiffs, 03-Civ. 2237 (RWS)

-against-

AMERICAN AIRLINES, INC. &
AIRBUS INDUSTRIE, G.I.E.,

OPINION

Defendants.

---x

Sweet, D.J.

Plaintiff Yanet Dishmey Rosario De George ("de George") has filed a motion on order to show cause for a declaration that Denise Valderrama ("Valderrama") is not the surviving spouse of decedent Milton George ("George") because Valderrama's marriage to George is void as a sham marriage.

Facts

George was killed in the crash of American Airlines Flight 587 on November 12, 2001. Dawind George ("Dawind"), George's daughter, and Maria Diaz ("Diaz"), George's domestic partner at the time of the crash, were appointed co-administrators of the George estate. In that capacity, Dawind and Diaz agreed to settle with defendants American Airlines and Airbus, subject to the entry of a compromise order approving the settlement and directing distribution.

Both Valderrama and de George claim the right to share in the estate's wrongful death settlement as George's surviving spouse. George and Valderrama were married in New York County on August 18, 1989. De George has alleged that George entered into this marriage for the sole purpose of establishing permanent residency in the United States. Though they no longer cohabitated at the time of the crash—and indeed, George and Diaz have been living together since 1992 and had a son, Kelvin, in

1993—George and Valderrama never divorced or otherwise dissolved the marriage. On April 16, 2001, de George purported to marry George in the Dominican Republic.

Discussion

This Court has addressed the precise issue raised in this motion in the related case of *Carty v. Am. Airlines, Inc. (In re Air Crash at Belle Harbor),* 2005 U.S. Dist. LEXIS 8415 (S.D.N.Y. May 2, 2005). In *Carty,* Fabrizio Carty (the decedent's husband or "Carty") and Olga Garcia (the decedent's mother or "Garcia") each sought a judgment determining Garcia's rights of participation in the proceeds of any settlement in the wrongful death action arising from the death of Genimiz Garcia Carty (the decedent, or "Genimiz") in the crash of American Airlines Flight 587. Garcia claimed that the decedent's husband was not entitled to share in the distribution of any wrongful death settlement because his "sole motivation for marrying Genemiz was to obtain legal residency status. . . ." 2005 U.S. Dist. LEXIS 8415, at *16.

After confirming its authority under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and Fed.R.Civ.P. 54 and 57 to provide declaratory relief, the Court held that the dispute satisfied the case and controversy requirement of Article III of the U.S. Constitution. For the same reasons elucidated in *Carty,* the Court has similar

authority in the instant case. 2005 U.S. Dist. LEXIS 8415, at *6-*16.

De George asserts that federal immigration law should govern the validity of the George/Valderrama marriage. However, the issue in this case is not the validity of the marriage as such, but rather whether Valderrama is eligible to collect from the George estate as his surviving spouse. This issue is governed by the New York Estates, Powers and Trusts Law. *See Carty,* 2005 U.S. Dist. LEXIS 8415, at *16; *Estate of Julia Dominguez,* 2002 N.Y. Misc. LEXIS 1596, at *24-*27 (Sur. Ct. Bronx Co. Nov. 18, 2002).

Under New York law, "the grounds for disqualifying a spouse from recovering wrongful death damages are rather narrow." *Carty,* 2005 U.S. Dist. LEXIS 8415 at *26. Specifically, a husband or wife is entitled to collect as a surviving spouse unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:

> (1) A final decree or judgment of divorce, of annulment or declaring the nullity of a marriage or dissolving such marriage on the ground of absence, recognized as valid under the law of this state, was in effect when the deceased spouse died.
>
> (2) The marriage was void as incestuous under section five of the domestic relations law,

remarriage under section eight thereof.

(3) The spouse had procured outside of this state a final decree or judgment of divorce from the deceased spouse, of annulment or declaring the nullity of the marriage with the deceased spouse or dissolving such marriage on the ground of absence, not recognized as valid under the law of this state.

(4) A final decree or judgment of separation, recognized as valid under the law of this state, was rendered against the spouse, and such decree or judgment was in effect when the deceased spouse died.

(5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.

(6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support.

N.Y. Est. Powers & Trusts L. §

N.Y. Est. Powers & Trusts L. § 5-1.2(a).

In the instant case, de George has alleged that the marriage of Valderrama and George was a sham, entered into for the sole purpose of enabling George to establish residence in the United States. While such "green card marriages" may violate United States immigration laws or be grounds for dissolving or annulling the marriage under the New York Domestic Relations Law, it is the intestacy law of New York that govern the distribution of George's estate.

As this Court stated in *Carty,* "the underlying motivation for [the marriage] is irrelevant to the question how the proceeds from the. . .wrongful death claim should be distributed." 2005 U.S. Dist. LEXIS 8415 at *30. De George has not alleged, let alone made a showing, that any of the six circumstances that would disqualify Valderrama from inheriting as a surviving spouse pertain.

Accordingly, de George's motion is denied.

It is so ordered

s/ Robert W. Sweet

New York, NY

May 29, 2007

IN RE: AIR CRASH AT BELLE HARBOR
MDL 1448 (RWS)

NEW YORK ON NOVEMBER 12, 2001
02-Civ. 439 (RWS)

---x

YANET DISHMEY ROSARIO DE GEORGE

Plaintiff, 02-Civ. 4765 (RWS)

-against-

AMERICAN AIRLINES, INC.

Defendant.

---x

DAWIND GEORGE, ET., AL.,

Plaintiffs, 03-Civ. 2237 (RWS)

-against-

AMERICAN AIRLINES, INC. &
AIRBUS INDUSTRIE, G.I.E.,
Defendants.

ORDER DIRECTING ENTRY
OF JUDMENT ON COURT'S ORDER OF
MAY 29, 2007

Milton George was killed in the crash of American Airlines Flight 587 on November 12, 2001. On April 7, 2003, Letters of Temporary

2001. On April 7, 2003, Letters of Temporary Administration were issued to Dawind George, the eldest son of the decedent and Maria Diaz, decedent's live-in partner, authorizing them to prosecute an action for the wrongful death of Milton George. Thereafter, the Co-Administrators filed suit in this Court for the wrongful death of Milton George on behalf of all of his lawful wrongful death distributes and heirs. That lawsuit was assigned Civil Action No. 06-CV-2237 (RWS).

Four other lawsuits for the death of Milton George were filed in other districts and transferred to this Court as part of MDL No. 1448 (RWS), and per the Order of this Court dated January 12, 2004, were consolidated with Civil Action No. 03-CV-2237. One of the these actions was Civil Action No. 02-CV-4765, brought on behalf of Yanet Dishmey, as alleged spouse. The other actions were Civil Action NO. 04-CV-2830 (RWS), brought on behalf of Denise Valderrama, as alleged surviving spouse, Civil Action No. 03-CV-4562 (RWS), brought on behalf of Ana Rollins, as surviving mother; and Civil Action No. 103-CV-5205 (RWS), brought on behalf of Smailyn George, as surviving son. The only duly appointed estate representatives were Co-Administrators Dawind George and Maria Diaz.

In January 2006, after a lengthy period of factual investigation and discovery, the Co-Administrators negotiated a confidential settlement offer for the wrongful death of

Milton George which they agreed to accept, subject to this Court's entry of a compromise order approving the settlement and attorneys' fees and costs and directing distribution of the net proceeds to the decedents lawful wrongful death distributes, according to their respective losses. The Co-Administrators took the position that Yanet Dishmey was not one of Milton George's lawful wrongful death distributes because she had married the decedent while he was still married to Denise Valderrama.

On June 20, 2006, Yanet Dishmey filed a motion on order to show cause for a declaration that Denise Valderrama was not the surviving wife of decedent Milton George and that instead she, Yanet Dishmey, was the surviving spouse. The Co-Administrators opposed Yanet Dishmey's motion.

On May 20, 2007, this Court denied Yanet Dishmey's motion and ruled that Denise Valderrama was Milton George's legal surviving wife and thus was entitled to share in the settlement for his wrongful death.

Yanet Dishmey appealed this Court's May 29, 2007 Order, but her appeal was dismissed for lack of appellate jurisdiction because she had not obtained a certification from this Court pursuant to Rule 54(b), of the Federal Rules of Civil Procedure. Thereafter, Yanet Dishmey filed an Emergency Motion for Proper Rule 54(b) Certification.

WHEREFORE, on further consideration of this Court's Order of May 29, 2007, which completely disposed of the separate claim of Yanet Dishmey arising out of the death of Milton George in the crash of American Airlines Flight 587, this Court is of the opinion that this Order should result in a separate appealable judgment under Rule 54(b), of the Federal Rules of Civil Procedure. Furthermore, this Court is also of the opinion that there is no just reason for delay in the entry of a separate final judgment with respect to the claims of Yanet Dishmey because 1) by the Co-Administrators have settled the claims of all legally recognized wrongful death beneficiaries with defendants American Airlines, Inc., and Airbus Industrie, G.I.E., and 2) the dispute regarding the question of whether Denise Valderrama or Yanet Dishmey is the legal surviving wife of decedent Milton George is the only issue that remains to be resolved prior to the distribution of the settlement proceeds. Therefore,

IT IS ORDERED that:

1. This Court certifies, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay in the entry of a separate final judgment with respect to the matters disposed of in this Court's Order of May 29, 2007 for the reasons set forth above;
2. All Claims of Yanet Dishmey arising out of the death of Milton George in the crash of American Airlines Flight 587 and encompassed by Civil Action No. 02-CV-4765

(RWS) are fully and finally dismissed in their entirety;
3. Yanet Dishmey take nothing from either defendant in this action;
4. This final judgment pertains to the claims of Yanet Dishmey only, and does not pertain to the claims of the remaining plaintiffs and beneficiaries in this consolidated action who filed Civil Action Nos. 03-CV-2237.
5. The Clerk of the Court will enter a separate final judgment in Civil Action No. 02-CV-4765 based on this Order and the Court's Order of May 29, 2007.

New York, NY
March 6, 2008

s/Robert W. Sweet
ROBERT W. SWEET, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

IN RE: AIR CRASH AT BELLE HARBOR, NEW YORK ON NOVEMBER 12, 2001

02MDL1448
02CIVIL4765

----------x

YANET DISHMEY ROSARIO DeGEORGE, Individually and on behalf of others,

Plaintiff,

-against-

JUDGMENT

AMERICAN AIRLINES, INC., a subsidiary of AMR Corporation,

Defendant.

----------x

DAWIND GEORGE, individually, DAWIND GOERGE
And MARIA DIAZ, as Co-Administrators of the Estate of
MILTON GEORGE, deceased, and MARIA DIAZ, as
Mother and guardian of the property of
KELVIN GEORGE,

03CIVIL2237

-against-

AMERICAN AIRLINES, INC. and AIRBUS INDUSTRIES, G.I.E.,

Defendant.

----------x

Whereas the above-captioned action having come before this Court, and the matter

having come before the Honorable Robert W. Sweet, united States District Judge, and the Court, on May 29, 2007 and March 6, 2008, having rendered its opinion and order denying Yanet Dishmey's motion on order to show cause for the declaration that Denise Valderamma is not the surviving spouse of decedent Milton George and directing entry of a separate judgment pursuant to Fed. R. Civ. P. 54(b) in case no. 02 CV 4765 that all claims of Yanet Dismey arising out of the death of Milton George are dismissed in their entirety and that Yanet Dishmey take nothing from either defendant in this action, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion and Order dated May 29, 2007 and March 6, 2008. that there is no just reason for delay pursuant to Fed. R. Civ. P. 54(b), judgment is entered denying Yanet Dishmey's motion on order to show cause for declaration that Denise Valderrama is not the surviving spouse of decedent Milton George, in case no. 02 CV 4765, all claims of Yanet Dismey arising out of the death of Milton George are dismissed in their entirety, and Yanet Dismey shall take nothing from defendant in this action.

Dated: New York, New York
March 31, 2008

s/J. MICHAEL McMAHON
Clerk of Court
By: Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Number(s): 08-2103-cv

Yanet Dishmey Rosario De George,

Appellant,

v.

American Airlines, Inc., et. al.,

Appellees.

Motion for: Motion to be Named as Appellees
Set forth below precise, complete statement of relief sought:

Dawind George and Maria Diaz, the Co-Administrators of the Estate of Milton George submit this motion to be named as Appellees in the above-referenced case.

ORDER

IT IS HEREBY ORDERED THAT the MOTION is GRANTED.

Date: 5/26/08
FOR THE COURT:
By: s/CATHERINE O'HAGAN WOLFE,
Clerk of Court
United States Court of Appeals
Filed May 26, 2008
Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on the 18th day of June two thousand and eight.

Present: Hon. Amalya L. Kearse,
Hon. Pierre N. Leval,
Hon. Robert D. Sack
Circuit Judges.

Yanet Dishmey Rosario De George,
Individually and on behalf of others,

Plaintiff-Appellant,

08-2103-cv

American Airlines, Inc., a subsidiary of AMR Corporation,

Defendant-Appellee.

Appellant, through counsel, moves for a stay and injunction pending appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED because Appellant has not met the requirements for that relief. *See In re*

World Trade Center Disaster Site Litig., 503 F.3d 167, 170 (2d Cir. 2007); *La Rouhce v. Kezer,* 20 F.3d 68, 72 (2d Cir. 1994).

FOR THE COURT:
By: s/CATHERINE O'HAGAN WOLFE,
Clerk of Court

United States Court of Appeals
Filed June 18, 2008
Second Circuit

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Number(s): 08-2103-cv

Yanet Dishmey Rosario De George,

Appellant,

v.

American Airlines, Inc., et. al.,

Appellees.

Motion for: Leave to File a Sur-Reply to the Co-Administrators' Reply in Support of Motion to Dismiss

Set forth below precise, complete statement of relief sought: Appellant De George filed her appeal within the requisite timeframe and paid all fees and she should be afforded the opportunity to argue the issues raised in her Notice of Appeal regardless of her receipt of the Consolidation Order

ORDER

IT IS HEREBY ORDERED that Appellant's motion to file a Sur-Reply to the Co-Administrators' Reply in support of the motion to dismiss is GRANTED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court
By: s/ Joy Fallek, Administrative Attorney

United States Court of Appeals
Filed July 10, 2008
Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 31st day of July, two thousand, eight,

Present: Hon. Sonia Sotomayor,
Hon. Robert A. Katzman,
Hon. Reena Raggi,
Circuit Judges.

Yanet Dishmey Rosario De George,
Individually and on behalf of others,

Plaintiff-Appellant,

08-2103-cv

American Airlines, Inc., a subsidiary of AMR Corporation,

Defendant-Appellee.

Dawind George, Maria Diaz,

Appellees.

Appellees, through counsel, move to dismiss the appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED. The Clerk's Office is directed to issue a briefing schedule.

FOR THE COURT:
By: s/CATHERINE O'HAGAN WOLFE,
Clerk of Court

United States Court of Appeals
Filed July 31, 2008
Second Circuit

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket Number(s): 08-2103-cv

Yanet Dishmey Rosario De George,

Appellant,

v.

American Airliens, Inc., et. al.,

Appellees.

Motion for: Clarification of Appendix Title and for Permission to Submit Addendum to Brief

Set forth below precise, complete statement of relief sought: Appellees seek to advise the Court that they had no involvement in the creation for the appellant's 681-page "Joint Appendix." Appellees were never consulted regarding the contents of the appendix, nor given an opportunity to propose designations or to object to appellant's designations prior to the filing of the appendix. Appellees therefore request that the "Joint Appendix" be retitled "Appellent's Appendix" and that this Court accept appellees' additional submissions.

ORDER

IT IS HEREBY ORDERED that Appellee's motion for clarification of appendix title and

for leave to submit an addendum to Appellee's brief is GRANTED. The joint appendix shall now be referred to as the Appellant's appendix.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk of Court
By: s/ Judy Pisnanont,
Motions Staff Attorney
Date: 10/09/08

United States Court of Appeals
Filed Oct 09 2008
Second Circuit

MANDATE
08-2103-cv
Dc George v. American Airlines

United States Court of Appeals
For the Second Circuit

Summary Order

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order.)" A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held

at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 30th day of June, two thousand and nine.

PRESENT:

HON. Chester J. Straub
HON. Peter W. Hall
HON. Debra Ann Livingston,
Circuit Judges

YANET DISHMEY ROSARIO DE GEORGE, Individually and on behalf of others,

Plaintiff-Appellant,

08-2103-cv

v.

AMERICAN AIRLINES, INC., a Subsidiary of AMR CORPORATION,

Defendant-Appellee,

DAWIND GEORGE, MARIA DIAZ

Appellees.

FILED JUNE 20, 2009
US COURT OF APPEALS
SECOND CIRCUIT

Issued as Mandate: August 4, 2009

Appearing for Plaintiff-Appellant:

CASEY F. SCHADEN, Schaden, Katzman, Lampert & McClune, Broomfield, CO

Appearing for Appellees:
MEGAN W. BENETT, Kreindler & Kreindler LLP (Robert J. Spragg, Kreindler & Kreindler, LLP, Kenneth P. Nolan, Speiser Krause Nolan & Granito, on the brief), New York, New York.

Appeal from March 31, 2008, judgment of the United States District Court for the Southern District of New York (Sweet, J.) dismissing all claims of Plaintiff-Appellant De George arising out of the death of Milton George in the crash of American Airlines Flight 587.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment is **AFFIRMED.**

Plaintiff-Appellant Yanet Dishmey Rosario De George ("De George") appeals from a judgment of the United States District Court for the Southern District of New York (Sweet, *J.)* dismissing all of her claims arising out of the death of her purported husband Milton George ("George") in the crash of American Airlines Flight 587. De George argues that the district court erroneously concluded that Denise Valderrama was George's surviving spouse, ruling in favor of Appellees Dawind George and Maria Diaz, the Co-Administrators of Milton George's estate (the "Co-Administrators"). The Co-Administrators

successfully argued to the district court that George never dissolved his marriage with Valderrama and, therefore, that De George's marriage to George is invalid as bigamous. De George asserts that she is George's legal wife, alleging that Valderrama's marriage to George was a "sham" or "green card" marriage and that federal immigration law therefore renders it "void ab initio." We assume the parties' familiarity with the facts, the procedural history, and the issues on appeal.

When related cases filed in various federal districts have been consolidated for pre-trial purposes before one court under 28 U.S.C. § 1407(a), "under the rule of *Van Dusen v. Barrack*, 376 U.S. 612 (1964), a transferee court applies the substantive state law, including choice-of-law rules, of the jurisdiction in which the action was filed." *Menowitz v. Brown*, 991 F.2d 36, 40 (2d Cir.1993) (citation modified). The question of who is eligible to collect a portion of the wrongful death settlement from the George estate as his surviving spouse is a question of state law.[1] *See, e.g., De Sylva v. Ballentine*, 351 U.S. 570, 580 (1956) ("[T]here is no federal law of domestic relations, which is primarily a

[1] De George engages in a misguided attempt to use federal immigration law as grounds for her argument that the George-Valderrama marriage was "void ab initio." Although federal immigration law may treat a marriage entered into solely to obtain a "green card" as "void" for purposes of eligibility for favorable immigration status, federal immigration law is not applicable to domestic relations or intestacy determinations, which are governed by state law.

matter of state concern."). The choice of law rules for both Texas, the state in which De George commenced her action, and New York, the state in which Valderrama and the Co-Administrators of George's estate brought their actions, direct that New York State substantive law should determine the validity of Valderrama's marriage to George as it relates to her right of recovery. *See In re Estate of Loveless,* 64 S.W.3d 564, 575 (Tex .App.2001) (noting that while courts have traditionally "used the law of the place a marriage purportedly occurred to determine the validity of the ceremony," Texas courts after *Seth v. Seth* have acknowledged that Texas prescribes the most significant relationship approach); *Seth v. Seth,* 694 S.W.2d 459, 462 (Tex.App.1985) (Texas applies "the most significant relationship approach ... to determine choice of law in a marriage or divorce context."); *In re Petition for Compulsory Accounting in Estate of Farraj,* No. 4803 07, 2009 WL 997481, at *2 (N.Y.Sur.Ct. Apr. 14, 2009) (New York's "general rule is that the validity of a marriage is governed by the law of the state where the marriage itself took place." (citing *In re May's Estate,* 114 N.E.2d 4, 6 (N.Y.1953))).

We now address whether the district court correctly applied New York law in determining which of George's purported wives was the surviving spouse, a question we review *de novo. See Travellers Int'l, A.G. v. Trans World Airlines, Inc.,* 41 F.3d 1570, 1575 (2d Cir.1994) (district court's legal conclusions are reviewed *de novo*).

The district court framed the issue as requiring an analysis of whether the first wife, Valderrama, was disqualified from recovering as a surviving spouse. The court correctly stated that, under New York law, " 'the grounds for disqualifying a spouse from recovering wrongful death damages are rather narrow.' " *De George v. Am. Airlines, Inc. (In re Air Crash at Belle Harbor),* No. 02 MDL 1448, 2007 WL 1575251 at *2 (S.D.N.Y. May 30, 2007) (quoting *Carty v. Am. Airlines, Inc. (In re Air Crash at Belle Harbor),* No. 02 MDL 1448, 2005 WL 1162448, at *8 (S.D.N.Y. May 10, 2005) (Sweet, *J.*)). Specifically, the applicable New York statute provides that:

(a) A husband or wife is a surviving spouse within the meaning, and for the purposes of [, *inter alia,* the statute governing the distribution of wrongful death damages], unless it is established satisfactorily to the court having jurisdiction of the action or proceeding that:

(1) A final decree or judgment of divorce, of annulment or declaring the nullity of a marriage or dissolving such marriage on the ground of absence, recognized as valid under the law of this state, was in effect when the deceased spouse died.

(2) The marriage was void as incestuous under section five of the domestic relations law, bigamous under section six thereof, or a

prohibited remarriage under section eight thereof.

(3) The spouse had procured outside of this state a final decree or judgment of divorce from the deceased spouse, of annulment or declaring the nullity of the marriage with the deceased spouse or dissolving such marriage on the ground of absence, not recognized as valid under the law of this state.

(4) A final decree or judgment of separation, recognized as valid under the law of this state, was rendered against the spouse, and such decree or judgment was in effect when the deceased spouse died.

(5) The spouse abandoned the deceased spouse, and such abandonment continued until the time of death.

(6) A spouse who, having the duty to support the other spouse, failed or refused to provide for such spouse though he or she had the means or ability to do so, unless such marital duty was resumed and continued until the death of the spouse having the need of support.

N.Y. Est. Powers & Trusts Law. § 5-1.2(a).

De George asserts that the marriage between Valderrama and George was a "sham" and "illegal," and as a result was "void from the beginning" such that the marriage never

existed. At least one New York State court has specifically addressed the right of a "green card" or "sham" spouse to recover for a wrongful death resulting from the Flight 587 crash. *See Estate of Dominguez,* 2002 WL 31844696, at *5-* 10 (N.Y.Sur.Ct. Nov. 18, 2002). The *Dominguez* court found that, without more, a surviving spouse cannot be disqualified pursuant to § 5-1.2(a) merely because the marriage was entered into solely for the purpose of securing permanent resident status. *Id.; see also Carty,* 2005 WL 1162448, at *8-*10. This Court has likewise noted that "the New York courts have repeatedly held allegedly 'sham' or 'limited purpose' marriages to be neither void nor voidable, and thus to be dissolvable only by a decree of divorce." *United States v. Diogo,* 320 F.2d 898, 907-08 (2d Cir .1963) (concluding that evidence was insufficient to prove the defendants' marriages, into which they allegedly entered to obtain nonquota immigrant status, were void in the context of a prosecution charging defendants with making false statements by claiming marriage to citizens).

Following the reasoning outlined above, the district court concluded that because De George had not alleged or shown that any of the six circumstances described in § 5-1.2(a) apply to Valderrama and George's marriage, as a matter of law Valderrama could not be disinherited as a surviving spouse even if it was proved that Valderrama's marriage to George was a "sham" marriage. We agree that New York law does not prohibit a surviving spouse from recovering even if the marriage

was entered into for "sham" or "green card" purposes.

We further note, however, that what the parties appear not to have argued, and thus what the district court did not address, "is that it is also well established in New York law that when a court is confronted with the claim that a formal second marriage is invalid because of the existence of a valid first marriage, a strong presumption of validity attaches to the second marriage." *Grabois v. Jones,* 89 F.3d 97, 100 (2d Cir.1996). The question of whether Valderrama is disqualified from recovering-or, as De George originally framed the issue in her Motion to Show Cause, whether *De George* should be disqualified from recovering-necessarily also involves a determination of which of Milton George's two ceremonial marriages is valid under applicable New York law.[2] *See, e.g.,*

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[2] De George's counsel did not discuss-or even so much as mention-this "well established" rule of New York law in any of her filings below or on appeal. *Grabois,* 89 F.3d at 100. "Nonetheless, because the issue is a question of law and because we conclude that [ignoring the presumption in favor of a second spouse would] violate [New York] law, we believe it appropriate to consider the issue." *Trustees of the Nat'l Automatic Sprinkler Indus. Pension Fund v. Fairfield County Sprinkler Co.*, 243 F.3d 112, 116 n. 2 (2d Cir.2001); *see also Singleton v. Wulff,* 428 U.S. 106, 121 (1976) ("The matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases."). Furthermore, the underlying *issue* of whether De George is disqualified from recovery as a surviving spouse on the basis that Valderrama's

Metro. Life Ins. Co. v. Jackson, 896 F.Supp. 318, 321-24 (S.D.N.Y.1995) (Sotomayor, *J.)* (first determining whether first spouse provided sufficient evidence to overcome presumption in favor of second marriage's validity, then analyzing whether marriage fell under disqualification categories under § 5-1.2).

Both Valderrama and De George have presented official marriage certificates, evidencing that each was party to a ceremonial marriage with George. "The more recent of two ceremonial marriages is presumed valid under New York law. The burden is on the first spouse to rebut this presumption, proving the more recent marriage invalid." *Id.* at 321; *see also Steele v. Richardson,* 472 F .2d 49, 51 (2d Cir.1972); *Dolan v. Celebrezze,* 381 F.2d 231, 234-38 (2d Cir.1967) (Friendly, *J.).* Section 6 of the New York Domestic Relations Law "states unambiguously that a second marriage is invalid if either of the parties to that marriage is already married." *Grabois,* 89 F.3d at 100 (citing N.Y. Dom. Rel. Law § 6). In light of New York's presumption in favor of the second of two marriages, the question with which we are presented is whether George was "already married" to Valderrama at the time he married De George. *Id.* We need not inquire into whether "substantial evidence" exists to overcome the presumption, however, because

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marriage to George remained valid was raised below and on appeal.

De George's counsel conceded at oral argument that no divorce had taken place with respect to George's prior marriage to Valderrama, nor did De George's counsel suggest implicitly or explicitly when given the opportunity to do so that there was any other basis for invalidating the George-Valderrama marriage other than her "green card" sham marriage theory, which is without merit. *Steele,* 472 F.2d at 51-52. In fact, De George's proffered evidence indicating that George had initiated (but not completed) divorce proceedings against Valderrama in the Dominican Republic at the time of his marriage to De George further demonstrates that the George-Valderrama marriage had not been invalidated prior to this point.

We therefore conclude that the George-Valderrama marriage was both "initially valid and remained undissolved," rendering George's subsequent marriage to De George void. *Id.* Accordingly, De George is not entitled to recover as a surviving spouse. The additional arguments De George raises on appeal are no longer relevant and are without merit.

For the reasons stated herein, we **AFFIRM** the judgment of the district court.

FOR THE COURT:

By: s/ Catherine O'Hagan Wolfe, Clerk

A TRUE COPY OF CATHERINE O'HAGAN WOLFE, CLERK

By s/ Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27th day of July, two thousand and nine.

PRESENT:
CHESTER J. STRAUB,
PETER W. HALL,
DEBRA ANN LIVINGSTON,
Circuit Judges.

YANET DISHMEY ROSARIO DE GEORGE, individually and o behalf of others,

Plaintiff-Appellant,

v.

AMERICAN AIRLINES, INC., a subsidiary of AMR CORPORATION,

Defendant-appellee,

DAWIND GEORGE, MARIA DIAZ,

Appellees.

Appellant Yanet Dishmey Rosario De George, individually and on behalf of others, having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

By: *s/ Frank Perez, Deputy Clerk*
Filed July 27, 2009.

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(2)

No. 09-500

Supreme Court, U.S.
FILED
NOV 25 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

YANET DISHMEY ROSARIO De GEORGE,

Petitioner,

v.

DAWIND GEORGE and MARIA DIAZ,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

FRANCIS G. FLEMING
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ROBERT J. SPRAGG
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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. Should this Court review the factual determinations of the District Court and the Circuit Court that under New York's Estate Powers and Trust Law, petitioner Yanet Dishmey, decedent's "wife" from a bigamous marriage, was not entitled to recover wrongful death damages?

II. Should this Court review the factual determinations of the District Court and the Circuit Court when petitioner Yanet Dishmey has presented no evidence in support of her claim that the marriage she challenges was entered into solely to defraud federal immigration officials?

III. Should federal courts disregard the long-standing federalism principle leaving domestic relations and intestacy determinations to state law and invalidate a marriage allegedly entered into solely for the purpose of defrauding immigration officials, even though the record contains no evidence to support the fraud allegation?

PARTIES TO THE PROCEEDINGS

American Airlines, Inc., an original defendant, was not a party to the proceeding in the Court of Appeals.

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INTRODUCTION

Petitioner Yanet Dishmey ("Petitioner") presents no compelling reason for granting her petition for a writ of *certiorari*. *See* Sup. Ct. R. 10. Petitioner does not argue that the Second Circuit's decision conflicts with a decision of this Court or another Court of Appeals. *See* Sup. Ct. R. 10(a). Nor does she demonstrate that the decision below decided an important federal question unsettled by this Court. *See* Sup. Ct. R. 10(c). Rather, Petitioner asks this Court to (1) engage in a factual review of the decisions of both courts below and (2) upset long-settled federalism principles and invade the province of state law-making by invalidating New York's domestic relations and intestacy distribution statutes on the specious ground that those state laws conflict with federal immigration laws.

In this wrongful death settlement distribution dispute, the District Court and the Circuit Court looked to the law of the state where the decedent resided, was domiciled and was married, New York, in deciding Petitioner's motion to disqualify Denise Valderrama, decedent's wife, from recovering wrongful death benefits.

Applying New York's Estate Powers & Trusts Law, the District Court found, and the Circuit Court affirmed, that no ground – as specifically set forth in the New York statute – justified disqualifying Ms. Valderrama. At the time Milton George died, he was still legally married to Denise Valderrama and, therefore, she was entitled to share in the wrongful death recovery.

Petitioner presented no evidence to support the claim that she, and not Ms. Valderrama, is a recovering spouse for distribution purposes. While she argues here that federal laws concerning immigration fraud require disqualifying the first wife from sharing in the settlement, she has never submitted any evidence that the Valderrama-George marriage was entered into solely to deceive federal immigration officials.

Even if Petitioner had presented evidence establishing that the Valderrama-George marriage was entered into for the sole purpose of obtaining United States citizenship and with the intent to defraud immigration officials, the District Court and the Second Circuit properly applied the law of the State of New York in holding that such federal criminal behavior did not affect the wrongful death settlement distribution. In reviewing the parties' relationships, the lower courts correctly applied the law of the place of the Valderrama-George marriage, New York, and in weighing the competing claims to recovery, the lower courts correctly applied the law of the place of decedent's residence and domicile, New York. Under New York law, Denise Valderrama cannot be disqualified as a recovering spouse, even if the Valderrama-George marriage was a "sham" marriage intended only to obtain legal residency for Mr. George. *See* N.Y. Est. Powers & Trusts L. § 5-4.1.

Petitioner has failed to meet her burden of demonstrating any compelling reason justifying a grant of *certiorari* and her petition should be denied.

STATEMENT OF THE CASE

Milton George died in the crash of American Airlines Flight 587 in Belle Harbor, New York on November 12, 2001. Pet. App. 175.[1] He is survived by, among others, his mother, his six children, his wife Denise Valderrama, his live-in companion Maria Diaz and his girlfriend, Petitioner Yanet Dishmey. *Id.*, 175-176.

Mr. George was born in the Dominican Republic on March 11, 1956. *Id.*, 178. He moved to New York City in 1986, where he met Denise Valderrama. *Id.*, 251, 255. Mr. George married Ms. Valderrama in New York City on August 18, 1989. *Id.*, 179, 193, 216, 251. That marriage was Mr. George's first. *Id.*, 193, 251, 254. Milton George and Denise Valderrama eventually separated, but never divorced. *Id.*, 193, 251, 252.

In 1992, Mr. George met Maria Diaz. *Id.*, 179. Mr. George and Ms. Diaz established a long-term domestic relationship. *Id.*, 179, 255. Mr. George and Ms. Diaz owned a home together, had a son together and together ran a business owned by Mr. George. *Id.*, 176, 179, 254, 274, 284. Despite their long-term domestic and professional partnership, Mr. George and Ms. Diaz never married. *Id.*, 278. During the course of their nearly decade-long relationship, Ms. Diaz was aware that Mr.

1. References to the appendix Petitioner submitted to this Court are cited herein as "App." followed by page number. References to the appendix Petitioner submitted to the Second Circuit are cited herein as "Pet. App." followed by the page number. References to the additional appendix Respondent submitted to the Second Circuit are cited as "Resp. App." followed by the page number.

George remained legally married to Ms. Valderrama. *Id.*, 278. Indeed, Mr. George never married Ms. Diaz precisely because he had never divorced his first and only legal wife, Ms. Valderrama. *Id.*, 254, 255, 278.

In April of 2001, Milton George went on vacation to the Dominican Republic. *Id.*, 255, Resp. App., 3. At the time, he was still co-habiting with Ms. Diaz and their son. Pet. App., 255. While in the Dominican Republic, Milton George telephoned his brother Mario – a licensed attorney and a confidant of Milton George – to tell Mario that he had met a young woman named Yanet Dishmey. Resp. App., 3. Milton told Mario that he wanted to have a physical relationship with Ms. Dishmey, but that she insisted that he marry her first. *Id.* Mario warned his brother that marrying Yanet would be illegal because he was still married to Denise Valderrama. *Id.* Milton George acknowledged to Mario that he knew this. *Id.* Nevertheless, Milton George married Ms. Dishmey, knowing that he was still legally wed to Denise Valderrama, and without any intention of ending his relationship with Ms. Diaz. *Id.* A few days after the marriage, Milton called Mario to tell him that he had gone ahead and married Yanet, knowing that he had done something wrong and wanting to keep it a secret from his partner, Maria Diaz. *Id.* Milton George also telephoned his eldest son, Dawind George, to tell him of the bigamous marriage, again acknowledging that the marriage to Yanet Dishmey was illegal because he was still married to Denise Valderrama. Pet. App., 255. Milton asked his son to keep the invalid marriage to Yanet Dishmey a secret. *Id.*

Upon his return from the Dominican Republic, Milton George resumed his life with Ms. Diaz and their son. *Id.*, 255, 278. Mr. George never divorced or legally separated from his wife Denise Valderrama, nor did he attempt to separate from Maria Diaz, nor did he make any effort to legitimize his relationship with Yanet Dishmey. *Id.*, 255. Rather, in November 2001, Mr. George arranged to return to the Dominican Republic, where he intended to annul his marriage to Ms. Dishmey. *Id.* Before he could do so, however, Mr. George died in the crash of American Airlines Flight 587 on November 12, 2001. *Id.*

PROCEEDINGS BELOW

In February of 2003, Dawind George, as eldest son of the decedent, petitioned the Surrogate's Court of New York County for Letters of Administration of the Estate of Milton George. Pet. App,177, 214, 254, 281. The two alleged spouses, Denise Valderrama and Yanet Dishmey, were served with notices of the proceedings in Surrogate's Court. *Id.*, 177. Maria Diaz, as guardian of decedent's minor son Kelvin George, cross-petitioned for Letters of Administration. *Id.*, 277. Neither Denise Valderrama nor Yanet Dishmey made an appearance to claim any right to Letters of Administration as spouse or to object in Surrogate's Court to Letters of Administration being granted to Dawind George and Maria Diaz. *Id.*, 177. On April 7, 2003, Letters of Temporary Administration were issued to Dawind George and Maria Diaz, naming them as Co-Administrators and authorizing them to prosecute an action for the wrongful death of Milton George. *Id.*, 197, 214, 277, 281.

The Co-Administrators, through their counsel, gave Yanet Dishmey, through her counsel, an opportunity to submit proof that Milton George intended to legitimize his marriage to her. *Id.*, 180, 221. In two letters, dated April 14, 2004 and April 28, 2004, Petitioner's attorney admitted that Petitioner's claim for wrongful death damages was based on Dominican law, which counsel believed would support recovery to a woman who had been supported by her "husband in fact," making "irrelevant" the Co-Administrators' "technical legal argument concerning marriage." *Id.*, 218-219, 223.

Dawind George and Maria Diaz filed suit in the Southern District of New York for the wrongful death of Milton George on behalf of all of his lawful wrongful death distributees and heirs. *Id.*, 176. That lawsuit was assigned to Judge Robert W. Sweet as part of Multi-District Litigation No. 1448 (MDL No. 1448). *Id.*, 41-42. Four other lawsuits for the death of Milton George were filed in other districts and transferred to Judge Sweet as part of MDL No. 1448, and were consolidated under one civil action number pursuant to an Order of the District Court dated January 12, 2004. *Id.*, 644; Resp. App., 5-9. The four other suits were (1) the action brought on behalf of Yanet Dishmey, as alleged spouse; (2) the action brought on behalf of Denise Valderrama, as surviving spouse; (3) the action brought on behalf of Ana Rollins, as surviving mother; and (4) the action brought on behalf of Smailyn George, as surviving son. Pet. App., 644; Resp. App., 5-9.

According to the January 12, 2004 Consolidation Order, when multiple actions were brought for the same decedent, "the person authorized to conduct settlement negotiations with the defendants on behalf of all claimants and the estate of such decedent shall be known as the 'Designated Representative[.]'" Resp. App., 6. Since Maria Diaz and Dawind George were appointed Co-Administrators by the Surrogate's Court of New York County, they shared the role of designated representative. Pet. App., 644.

As Co-Administrators, Dawind George and Maria Diaz, through their counsel, conducted factual investigations, obtained and reviewed official records pertaining to the decedent, interviewed family and friends of the decedent and responded to the discovery requests and interrogatories of defendants American Airlines and Airbus. *Id.*, 178. The Co-Administrators negotiated a confidential settlement offer for the wrongful death of Milton George that they agreed to accept, subject to the District Court's entry of a compromise order approving the settlement. *Id.*

On June 9, 2006, Petitioner, claiming that she, not Ms. Valderrama, was the legal spouse of decedent Milton George, moved in the District Court to disqualify Denise Valderrama as a wrongful death beneficiary. *Id.*, 152-154. Additionally, Petitioner requested that she share in any wrongful death settlement proceeds obtained by the Co-Administrators of Milton George's Estate. *Id.*, 153. All parties submitted affidavits and documentary evidence in support of their respective positions. The District Court denied Ms. Dishmey's motion, determining that, of the two women who claimed legal

right by marriage to share in the estate's wrongful death settlement, only the first wife, Ms. Valderrama, from whom Milton George was never divorced, was entitled to a portion of the recovery. *In re Air Crash at Belle Harbor, New York on November 12, 2001*, 2007 WL 1575251 (S.D.N.Y. May 30, 2007). After full briefing and oral argument, the Second Circuit affirmed the District Court's judgment in its entirety, ruling that the decedent's marriage to Petitioner was void and, "[a]ccordingly, [Petitioner] is not entitled to recover as a surviving spouse." App., 32. As to Petitioner's argument that federal immigration laws displaced state domestic relations and intestacy distribution statutes, the Second Circuit noted that Petitioner

> engages in a misguided attempt to use federal immigration law as grounds for her argument that the George-Valderrama marriage was 'void ab initio.' Although federal immigration law may treat a marriage entered into solely to obtain a 'green card' as 'void' for purposes of eligibility for favorable immigration status, federal immigration law is not applicable to domestic relations or intestacy determinations, which are governed by state law.

Id., 25.

This petition followed entry of the Second Circuit's denial of Petitioner's request for rehearing.

REASONS FOR DENYING THE PETITION

This case presents no federal question; the Circuit Court's decision does not conflict with the decision of any other federal court of appeals; and the courts below did not depart from the accepted and usual course of judicial proceedings that might justify the exercise of this Court's supervisory power. The District Court correctly applied New York's intestacy distribution law and found no ground for disqualifying Denise Valderrama from sharing in the wrongful death distribution. The Second Circuit, affirming that decision, properly determined that the validity of a marriage was to be determined pursuant to New York law. New York law is clear that "a second marriage is invalid if either of the parties to that marriage is already married." *Grabois v. Jones*, 89 F.3d 97, 100 (2d Cir. 1996) (citing N.Y. Dom. Rel. Law § 6). Petitioner has admitted that no divorce had taken place with respect to the Milton George-Denise Valderrama marriage. App. 32. Accordingly, this Court should deny her petition for a writ of *certiorari*.

I. The District Court and the Second Circuit Correctly Applied and Interpreted New York's Wrongful Death Distribution Law

The District Court denied Petitioner's motion to disqualify Denise Valderrama as a recovering spouse. Applying New York law, the District Court noted that "the grounds for disqualifying a spouse from recovering wrongful death damages are rather narrow." App. 4.

Under New York law, a spouse can be disqualified from recovering wrongful death damages in only six situations. According to section 5-1.2(a) of New York's Estate Powers and Trusts Law, a husband or wife is a surviving spouse who is entitled to recover wrongful death damages *unless* it is established satisfactorily to the court having jurisdiction over the action or proceeding that (1) the marriage was dissolved by divorce or annulment valid under New York law; (2) the marriage was incestuous; (3) the spouse seeking recovery had procured a divorce or annulment not valid under New York law; (4) a separation judgment valid under New York law was in place at the time of the death; (5) the spouse seeking recovery had abandoned the deceased spouse; or (6) the spouse seeking recovery was obligated to support the deceased spouse, but failed to do so. *N.Y. Est. Powers & Trusts L.* § 5-1.2(a).

The plain language of the statute establishes that entering a marriage for the sole purpose of supporting an immigration petition – which is Petitioner's only argument in support of her claim to disqualify Ms. Valderrama – does not disqualify a surviving spouse from participation in wrongful death proceeds. *See In Matter of Estate of Dominguez*, 2002 WL 31844696, at *5 (Sur.Ct.Bronx Cty., Nov. 18, 2002) (holding that a surviving spouse cannot be disqualified from receiving wrongful death proceeds pursuant to section 5-1.2 merely because the marriage was shown to be for the purpose of securing permanent resident status). Even if Milton George and Denise Valderrama married exclusively in order to obtain legal residency in the United States for Mr. George, that alone could not disqualify Ms. Valderrama from recovering wrongful death settlement proceeds under New York law.

II. Petitioner Has Presented No Evidence That the Marriage She Seeks to Invalidate Was Intended to Defraud Federal Immigration Officials

Petitioner relies only on her own conclusions and self-serving statements in asserting that the Valderrama-George marriage was a "sham, conducted only for immigration purposes." She cites to the following three pieces of "evidence," two of which are statements from her attorney, to support that claim:

1. A statement in the affidavit from Petitioner's counsel claiming that Maria Diaz, decedent's live-in companion, said that Milton George "married [Denise Valderrama] just to speed the Green Card process." Pet. App., 381.

2. A statement in the same affidavit from Petitioner's counsel claiming that Maria Diaz said that Milton George and Denise Valderrama never co-habited. *Id.*, 381.

3. The fact that Milton George and Maria Diaz lived together and had a child together three years after Milton George married Denise Valderrama. *Id.*, 179.

The two self-serving attorney's statements rely on hearsay contradicted in relevant part by the declarant and are not admissible proof of Petitioner's claims. The fact that in 1992 Mr. George had a child with Ms. Diaz is likewise not proof that his marriage three years earlier was entered into solely for fraudulent purposes.

Finally, Petitioner relies on her allegations that "during the month before he married Petitioner . . . Mr. George retained a divorce attorney in the Dominican Republic to obtain a divorce from Ms. Valderrama" and that "divorce papers were drawn up to dissolve Mr. George's marriage to Ms. Valderrama but his attorney neglected to finalize the matter." Even if true, these actions only serve to establish that Mr. George was still legally, validly married to Ms. Valderrama when he bigamously married Petitioner.

Contrary to Petitioner's representations, the record evidence establishes that Milton George and Denise Valderrama married in 1989 and never divorced. That evidence includes affidavits from Milton George's brother Mario George, Milton George's live-in companion Maria Diaz and Milton George's son Dawind George. Pet. App, 250-56,277-79. In addition, the parties submitted documentary evidence including the 1989 New York County certificate of the marriage between Milton George and Denise Valderrama and a certified Search Certificate from the Office of the County Clerk for the County of New York stating that no record of divorce of Milton George and Denise Valderrama existed in that office from January 1, 1989 through December 31, 2001. *Id.*, 276, 294.

Petitioner has submitted no reliable or admissible proof that the marriage was entered into for the sole purpose of defrauding federal immigration officials.

III. This Case Presents No Federal Issue

Even, however, if the record did establish that the marriage was intended to fraudulently obtain legal residency in the United States, as this Court has repeatedly recognized, "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States." *In re Burrus*, 136 U.S. 586, 593-94 (1890); *see also State of Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383-84 (1930) ("If when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States, there is no difficulty in construing the instrument accordingly and not much in dealing with the statutes.")

A. Under New York Domestic Relations Law, Petitioner Was Never Validly Married to Decedent

If a person, who is already legally married, attempts to enter into a subsequent marriage without dissolving the first, the subsequent marriage "is absolutely void." *N.Y. Dom. Rel. Law* § 6. Petitioner has admitted, both during oral argument to the Second Circuit and by the evidence she submitted below, that Milton George and Denise Valderrama were married in 1989 and were never legally divorced. Though under New York law, when more than one person claims to be the legal spouse of another, a rebuttable presumption of validity attaches to the most recent of marriages, *see Grabois*, 89 F.3d at 100, that presumption is irrelevant if the parties

acknowledge that the earlier marriage was never dissolved.

In this case, the meaningful record searches and sworn statements are sufficient to rebut any presumption that the second marriage was valid, were the presumption to apply. *Metropolitan Life Ins. Co. v. Jackson*, 896 F.Supp. 318, 322 (S.D.N.Y. 1995); *see also Milano v. Secretary of Health and Human Services*, 586 F.Supp. 1431, 1434 (E.D.N.Y.1984) (presumption rebutted when search of divorce records found no evidence of recorded divorce); *Boyd v. Heckler*, 588 F.Supp. 31, 33 (E.D.N.Y. 1984) (testimony from wife and child of first marriage that first marriage was not dissolved, plus record searches in two locations where divorce was most likely to have been procured, proved validity of first marriage under New York law). In this case, the evidence establishes that Milton George and Denise Valderrama were still married at the time that Milton George married Petitioner. First, the marriage certificate shows that Milton George and Denise Valderrama wed in 1989. Second, the certificate from the New York County Clerk demonstrates that no judgment of divorce with respect to that marriage was ever entered with his office. Third, the sworn affidavits from Milton George's brother, son and domestic partner all state that Milton George and Denise Valderrama never dissolved their marriage. Fourth, Petitioner submitted no proof below that the Valderrama-George marriage was ever dissolved. The evidence in the record easily overcomes whatever presumption might have attached to Petitioner's bigamous marriage.

B. Federal Immigration Laws Are Not Relevant to this Dispute

The validity of the Valderrama-George marriage and distribution of the proceeds from the settlement of the Milton George wrongful death action are questions governed solely by state law. On the rare occasion when state domestic relations law conflicts with a federal statute, this Court has limited review pursuant to the Supremacy Clause to determine only whether Congress has "positively required by direct enactment" that state law is pre-empted in the particular area. *See Wetmore v. Markoe*, 196 U.S. 68, 77 (1904). State family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause demands overriding state law. *United States v. Yazell*, 382 U.S. 341, 352 (1966).

No federal law preempts New York's domestic relations and intestacy distribution statutes. The federal immigration laws upon which Petitioner relies neither explicitly nor implicitly preempt the state law at issue here. Rather, those federal statutes penalize fraudulent conduct made in the context of immigration applications. Pursuant to 8 U.S.C. § 1325(c), "[a]ny individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both." Under 18 U.S.C. § 1546(a) "[w]hoever knowingly makes under oath, or . . . knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations . . . [s]hall be fined under this title or imprisoned between 10 and 25 years or both."

Furthermore, the federal cases that Petitioner cites are inapposite. They are, predictably, criminal prosecutions for fraud against the United States government. Whether or not any state law declares a "green card" marriage as "void *ab initio*" was not at issue in any of those cases. *See United States v. Lutwak*, 344 U.S. 604, 611 (1953) (case involved conspiracy prosecution under War Bride Act and the validity or not of the marriages was not material to the case); *Chin Bick Wah v. United States*, 245 F.2d 274, 276-78 (9th Cir. 1957) (case involved prosecution for making a false statement in an immigration visa application that applicant would be supported by American spouse); *United States v. Rubenstein*, 151 F.2d 915 (2d Cir. 1945) (case involved conspiracy to defraud the United States based on false statement of marital support in application for visa).

Congress has never sought to supplant the authority of the states to regulate marriages and intestacy distribution, and the courts below correctly resolved this estate dispute by recourse to New York law.

CONCLUSION

Petitioner has not established any compelling reason for this Court to grant her petition. Accordingly, Respondents Dawind George and Maria Diaz respectfully request that her petition be denied.

Respectfully submitted,

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No. 09-500

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In The

Supreme Court Of The United States

YANET DISHMEY ROSARIO DE GEORGE,
Individually and on behalf of others,
Petitioner,

v.

AMERICAN AIRLINES, INC.,
a subsidiary of AMR CORPORATION,
Respondent,

- and -

DAWIND GEORGE, MARIZ DIAZ,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE
SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

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PETITIONER'S REPLY BRIEF

Contrary to the Respondents' Brief in Opposition ("Opp."), De George's Petition does not concern a factual review of the decisions below. Instead, it addresses important matters of federal law and immigration policy. The District Court and the Court of Appeals erroneously applied a New York probate statute to strip the Petitioner of her spousal rights even though it neither addresses nor contemplates the validity of sham immigration marriages, and federal law deems them invalid and void ab initio.

The courts below disregarded Ms. Valderrama's purported criminal conduct and applied New York probate law in a vacuum. According to the Court of Appeals, "New York law does not prohibit a surviving spouse from recovering [a wrongful death settlement] even if the marriage was entered into for 'sham' or 'green card' purposes." Petitioner's App. at 29.[1] Such legal analysis ignores federal law pertaining to sham marriages, rewards those who engage in illegal immigration activity, and supports immigration marriage fraud.

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[1] References to Mrs. De George's Appendix to the Petition for a Writ of Certiorari are cited as "Petitioner's App." References to the Appellant's Appendix submitted in the Second Circuit are cited as "C.A. Appell. App." References to the Appellant's Addendum to the Appendix in her Reply Brief submitted to the Second Circuit are cited as "Appell. Add."

A. **The Respondents' Account of the Procedural Facts Leading Up to the District Court's Decision Are Misleading And Improperly Imply that the Petitioner Was Uninterested in Her Husband's Estate Until After The Respondents Reached a Settlement**

The Respondents point out that they petitioned the Surrogate's Court of New York County for Letters of Administration of the Estate of Milton George. Opp. at 5. They also imply that Petitioner De George was uninterested in her husband's estate. "Neither Denise Valderrama nor Yanet Dishmey [Petitioner De George] made an appearance to claim any right to Letters of Administration as spouse or to object in Surrogate's Court to Letters of Administration being granted to Dawind George and Maria Diaz." Opp. at 5. The reason Petitioner De George did not petition for Letters of Administration in New York was because she filed a wrongful death action in Texas as Mr. George's spouse. Her journey through the federal courts to New York was solely a result of the removal and transfer of her case pursuant to 28 U.S.C. § 1407.

The Respondents also imply that the District Court's January 12, 2004 Consolidation Order gave them the authority to settle the Petitioner's case. However, the Respondents violated the very terms of the Order. In relevant part, it states:

[T]he person authorized to conduct settlement negotiations with the defendants on behalf of all claimants and the estate of such decedent shall be

known as the Designated Representative and shall be determined as follows:

> (1) The Designated Representative shall be the person designated as such **by agreement of all plaintiffs** in those individually filed cases.
> (2) **In the event that there is no such agreement, then:**
> (A) When only one personal representative of the estate of the decedent has been appointed, the personal representative shall be the Designated Representative . . .

(C.A. Appell. App. 664)(emphasis added). The Respondents never attempted to reach an "agreement of all plaintiffs" as to the appointment of a Designated Representative. Instead, they bypassed the express provisions of the Order and entered into unilateral settlement negotiations with the defendants.

B. Contrary to the Respondents' Position, the Petitioner Presented Substantial Evidence that Mr. George's Marriage to Denise Valderrama was a Sham Immigration Marriage

At the district court level, Petitioner De George requested a period of formal discovery on the issue of Mr. George's fraudulent immigration marriage to Denise Valderrama. (C.A. Appell. App. 303). In fact, she noticed the depositions of Mario George, Maria Diaz, Dawind George, and Ms. Valderrama. However, her requests were denied,

and the District Court disallowed the depositions.[2] Appell. Add. 1-7. Nevertheless, ample evidence exists to show that the marriage between Mr. George and Ms. Valderrama was fraudulent.

The Respondents would have this Court believe that Petitioner De George "never submitted any evidence that the Valderrama-George marriage was entered into solely to deceive federal immigration officials." Opp. At 2. This is a blatant misrepresentation of the facts. In her Petition, De George proffered evidence that:

- Denise Valderrama, Mr. George's first wife, was romantically involved with his brother;

- Ms. Valderrama did not cohabitate with Mr. George;

- Mr. George lived with and had a child with Maria Diaz during his purported marriage to Ms. Valderrama;

- Mr. George hired an attorney in the Dominican Republic to procure a divorce from Ms. Valderrama; and

---

[2] Without permitting discovery and without holding a due process hearing, the District Court abolished the Petitioner's spousal right to share in the settlement proceeds procured as a result of her husband's wrongful death. Petitioner De George appealed this violation of her due process rights, but the Circuit Court did not address this important issue.

- The U.S. Government recognized Petitioner De George as Mr. George's surviving spouse after the crash of Flight 587 and issued her a visa.

Petition for a Writ of Certiorari ("Petition") at 6-7. Additional record evidence shows that Ms. Diaz knew that Mr. George's marriage to Ms. Valderrama was carried out as a "green card marriage." (C.A. Appell. App. 381). Moreover, Mr. George continuously supported Petitioner De George (both emotionally and financially) despite his "marriage" to another woman. Importantly, **Ms. Valderrama never appeared in court or submitted a brief to defend her position as Mr. George's legal wife.** Instead, the Respondent Co-Administrators have championed her cause for their own benefit and ignored Petitioner De George's rights.

The Respondents' assertion that Petitioner De George "never submitted any evidence that the Valderrama-George marriage was entered into solely to deceive federal immigration officials" is contradicted within the Respondents' own Brief. Section II of their Brief takes the position that "in asserting that the Valderrama-George marriage was a 'sham, conducted only for immigration purposes . . ." the Petitioner cites to just "three pieces of 'evidence' . . ." Opp. at 11. It then lists three affidavit statements and claims that two are contradicted by the Declarant. *Id.* However, the Respondents failed to cite record evidence of this contradiction, and the Petitioner is not aware of any such contradictions.

C. Ample Evidence Exists that Petitioner De George Was Mr. George's Lawful Wife at the Time of the Crash

The Respondents refer to Petitioner De George as Mr. George's "girlfriend" despite their knowledge of the Petitioner's valid marriage certificate from the Dominican Republic. Opp. at 3. The Respondents also fail to acknowledge the plethora of evidence supporting the validity of her marriage to Mr. George in the form of affidavit evidence, love letters written after their marriage, cards, signed photographs, and wire transfer receipts showing his financial support. (C.A. Appell. App. 340-349, 351-363, 410-413). Among the items that Mr. George sent the Petitioner was a signed "Sweetheart of the Year" award thanking the Petitioner for, "filling [his] life with kindness and light, for being the only person with whom [he was] happy to share love and respect." (C.A. Appell. App. 345-346). He also sent a card with the inscription "For My Wife" and a hand-written note stating, "from your husband who loves you." (C.A. Appell. App. 341). Such evidence contradicts the Co-Administrators' affidavit statements that Mr. George knew that his marriage to the Petitioner was "wrong" or that he intended to annul their marriage.

The Respondents also claim that Mr. George never made "any effort to legitimize his relationship with Yanet Dishmey [Petitioner De George]." Opp. At 5. This statement ignores record evidence of Mr. George's ceremonial marriage to Petitioner De George and Mr. George's initiation of divorce proceedings in the Dominican Republic

during the month before he married the Petitioner. (C.A. Appell. App. 388-389, 393-400).

D. Resolution of the Petitioner's Case Hinges on Federal Immigration Law and Related Federal Common Law; It is Neither Addressed Nor Contemplated By the Domestic Relations Laws of New York

The Immigration and Nationality Act (INA) regulates sham immigration marriages. Although it does not address their validity, long standing federal common law fills the interstices of the INA in this regard. *Zatuchni v. Secretary of Health and Human Services*, 516 F.3d 1312, 1328 (Fed. Cir. 2008)(Dyk, J., concurring in the result and dissenting from the majority opinion); Montana *v. United States*, 124 F.3d 1269, 1274 (Fed. Cir. 1997). Such federal case law holds that sham immigration marriages are invalid and void ab initio. *United States v. Lutwak*, 195 F.2d 748 (7th Cir. 1952); *United States v. Rubenstein*, 151 F.2d 915 (2d Cir. 1945).

The Respondents cite *Ex Parte Burrus*, 136 U.S. 586 (1890) and *State of Ohio ex rel. Popovici v. Agler*, 280 U.S. 379 (1930) for the erroneous position that this is a domestic relations issue reserved for regulation by the State of New York. These cases are factually distinguishable from the instant situation. The issue in *Ex Parte Burrus* was whether a federal court had jurisdiction to issue a writ of *habeas corpus* to recover the care and custody of a child in a custody dispute. 136 U.S. at 589. The *Agler* case is likewise distinguishable as it involved the Vice-Consul of

"Roumania's"[3] attempt to evade the jurisdiction of a state court in a divorce proceeding on the basis of Article 3, Section 2 of the Constitution. *Agler*, 280 U.S. at 382. Here, we are not concerned with the issue of jurisdiction; neither are we concerned with a custody matter or a divorce proceeding.

This case is not a matter of overriding New York's right to regulate and control domestic relations. To the contrary, it is a matter of immigration and nationality because it involves an attempt to defraud the United States Government through a sham immigration marriage.

E. The District Court and the Second Circuit Erroneously Applied New York Law to Determine the Validity of the Valderrama/George Marriage

New York Est. Powers & Trusts L. § 5-1.2(a) is not applicable. This statute does not address or contemplate sham immigration marriages. It simply provides the grounds for disqualifying a surviving spouse for purposes of New York probate law. In their Brief, the Respondents rely on a single case from the Surrogate's Court of Bronx County to support their argument to the contrary. *In Matter of Estate of Dominguez*, 2002 WL 31844696 at * 1 (Sur. Ct. Bronx. Cty., Nov. 18, 2002). However, it would contravene public policy to allow an unreported case from a state county surrogate's court to control the regulation of sham marriages when the underlying state statute fails to address the issue at all.

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[3] This is the spelling used in *Agler*, 280 U.S. at 379.

Section 6 of New York's Domestic Relations Laws is likewise inapplicable. It voids a marriage if one of the parties is still legally married to their first spouse. In the instant case, however, there was no marriage between Mr. George and Ms. Valderrama because they lacked the mutual consent necessary to form a valid marriage contract. Indeed the "marriage" was invalid and void ab initio. Therefore, contrary to the Respondents' position, it is immaterial whether Mr. George's attorney finalized the Valderrama/George divorce papers in the Dominican Republic.

Even if New York law did apply, which it does not, the Respondents have not and cannot overcome the strong presumption of validity that attaches to the Petitioner's marriage as recognized by *Grabois v. Jones*, 89 F.3d 97, 100 (2d Cir. 1996). The Respondents claim that "meaningful record searches and sworn statements" rebut this presumption. Opp. at 14. However, there is no record evidence that the Respondents conducted a "meaningful record search" to determine Mr. George's proper spousal beneficiary. Because the Respondent Co-Administrators have a financial interest in favoring an estranged wife over the wife who played an integral role in Mr. George's life, their reliance on self-serving affidavits is not surprising. Indeed, concrete record evidence demonstrates the validity of the Petitioner's marriage to Mr. George. Such evidence included: 1) a valid Dominican marriage certificate (C.A. Appell. App. 325-328); 2) love letters and cards to the Petitioner from Mr. George signed as her "husband"; (C.A. Appell. App. 340-346); 3) financial

support from her husband (C.A. Appell. App. 410-413); 4) recognition by the United States Government that the Petitioner was Mr. George's wife in the form of a visa (C.A. Appell. App. 365-372; and 5) recognition by a post-crash charity in the Dominican Republic that the Petitioner was Mr. George's wife (C.A. Appell. App. 3437-438).

F. Federal Law Cited by the Petitioner is On Point and Applicable

Finally, the Respondents claim that the INA and corresponding federal case law are inapplicable since they relate to criminal prosecution. The nature of the proceeding is not material to this analysis. Federal statutes governing sham marriages and their legislative history demonstrate Congress' intention to regulate and deter them.

CONCLUSION

Because Petitioner De George's case sets forth important issues of federal law and immigration policy, she respectfully requests that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

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